

ASSEMBLY BILL

No. 1778

Introduced by Assembly Member Quirk

February 3, 2016

An act to amend Section 67386 of the Education Code, relating to student safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1778, as introduced, Quirk. Postsecondary education: sexual assault and sexual violence training.

Existing law requires the governing boards of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions, in order to receive state funds for student financial assistance, to adopt detailed and victim-centered policies and protocols regarding sexual assault, domestic violence, dating violence, and stalking involving a student that comport with best practices and current professional standards, covering specified topics, including a comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases.

This bill would require those institutions, in order to receive state funds for student financial assistance, to conduct annual training of their respective employees, in addition to the training described above, on the employee's obligations in responding to and reporting incidents of sexual assault, domestic violence, dating violence, and stalking involving students.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 67386 of the Education Code is amended to read:

67386. (a) In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking, as defined in the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1092(f)), involving a student, both on and off campus. The policy shall include all of the following:

(1) An affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. “Affirmative consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

(2) A policy that, in the evaluation of complaints in any disciplinary process, it shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:

(A) The accused’s belief in affirmative consent arose from the intoxication or recklessness of the accused.

(B) The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.

(3) A policy that the standard used in determining whether the elements of the complaint against the accused have been demonstrated is the preponderance of the evidence.

(4) A policy that, in the evaluation of complaints in the disciplinary process, it shall not be a valid excuse that the accused

1 believed that the complainant affirmatively consented to the sexual
2 activity if the accused knew or reasonably should have known that
3 the complainant was unable to consent to the sexual activity under
4 any of the following circumstances:

5 (A) The complainant was asleep or unconscious.

6 (B) The complainant was incapacitated due to the influence of
7 drugs, alcohol, or medication, so that the complainant could not
8 understand the fact, nature, or extent of the sexual activity.

9 (C) The complainant was unable to communicate due to a mental
10 or physical condition.

11 (b) In order to receive state funds for student financial assistance,
12 the governing board of each community college district, the
13 Trustees of the California State University, the Regents of the
14 University of California, and the governing boards of independent
15 postsecondary institutions shall adopt detailed and victim-centered
16 policies and protocols regarding sexual assault, domestic violence,
17 dating violence, and stalking involving a student that comport with
18 best practices and current professional standards. At a minimum,
19 the policies and protocols shall cover all of the following:

20 (1) A policy statement on how the institution will provide
21 appropriate protections for the privacy of individuals involved,
22 including confidentiality.

23 (2) Initial response by the institution's personnel to a report of
24 an incident, including requirements specific to assisting the victim,
25 providing information in writing about the importance of preserving
26 evidence, and the identification and location of witnesses.

27 (3) Response to stranger and nonstranger sexual assault.

28 (4) The preliminary victim interview, including the development
29 of a victim interview protocol, and a comprehensive followup
30 victim interview, as appropriate.

31 (5) Contacting and interviewing the accused.

32 (6) Seeking the identification and location of witnesses.

33 (7) Providing written notification to the victim about the
34 availability of, and contact information for, on- and off-campus
35 resources and services, and coordination with law enforcement,
36 as appropriate.

37 (8) Participation of victim advocates and other supporting
38 people.

39 (9) Investigating allegations that alcohol or drugs were involved
40 in the incident.

(10) Providing that an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

(11) The role of the institutional staff supervision.

(12) A comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases.

(13) Procedures for confidential reporting by victims and third parties.

(c) In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall, to the extent feasible, enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations, including rape crisis centers, to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, and including resources for the accused.

(d) In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall implement comprehensive prevention and outreach programs addressing sexual violence, domestic violence, dating violence, and stalking. A comprehensive prevention program shall include a range of prevention strategies, including, but not limited to, empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction. Outreach programs shall be provided to make students aware of the institution's policy on sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach program shall

1 include a process for contacting and informing the student body,
2 campus organizations, athletic programs, and student groups about
3 the institution's overall sexual assault policy, the practical
4 implications of an affirmative consent standard, and the rights and
5 responsibilities of students under the policy.

6 *(e) In order to receive state funds for student financial*
7 *assistance, the governing board of each community college district,*
8 *the Trustees of the California State University, the Regents of the*
9 *University of California, and the governing boards of independent*
10 *postsecondary institutions shall conduct annual training of their*
11 *respective employees, in addition to the training required by*
12 *paragraph (12) of subdivision (b), on the employee's obligations*
13 *in responding to and reporting incidents of sexual assault, domestic*
14 *violence, dating violence, and stalking involving students.*

15 ~~(e)~~

16 *(f) Outreach programming shall be included as part of every*
17 *incoming student's orientation.*